

IN THE UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

GABRIEL BITON

V.

SHOSHANA BITON

CASE NO: 02W3220

MOTION TO QUASH SUBPOENAS

COMES NOW The Maternal Child Consortium, Inc. ("MCC"), a Pennsylvania corporation, Home HealthCare Resources, Inc. ("HHCR"), a Pennsylvania corporation, Dr. Ellen Blackman-Buckwalter ("Dr. Buckwalter"), and Dr. Elizabeth Koropsak-Berman ("Dr. Berman"), by their undersigned attorney and move the Court pursuant to Rule 45(c) F.R.C.P. for an Order quashing two subpoenas *duces tecum* issued by Plaintiff, Gabriel Biton in the above captioned matter. In support, MCC, HHCR, Dr. Buckwalter and Dr. Berman would demonstrate as follows:

1. On or about March 19, 2003, Plaintiff, through counsel, served a Subpoena *duces tecum* upon Dr. Buckwalter and HHCR seeking the testimony of Dr. Buckwalter and requiring the production of Dr. Buckwalter/HHCR's " . . . entire file relating to Gabriel Biton, Shoshana Biton, Noam Biton and/or Sarit Biton". (Subpoena Rider). A copy of the Buckwalter Subpoena is attached as Exhibit A.

2. On or about March 19, 2003, Plaintiff, through counsel, served a Subpoena *duces tecum* upon Dr. Berman and HHCR seeking the

testimony of Dr. Buckwalter and requiring the production of Dr. Berman/HHCR's " . . . entire file relating to Gabriel Biton, Shoshana Biton, Noam Biton and/or Sarit Biton". (Subpoena Rider). A copy of the Buckwalter Subpoena is attached as Exhibit B.

3. Dr. Buckwalter is a Pennsylvania licensed Psychologist who was employed by The Maternal Child Consortium, Inc. until March 28, 2003. Any records responsive to the request for production of documents set forth in the Rider attached to the Buckwalter Subpoena are the confidential, behavioral health records of MCC. Home HealthCare Resources, Inc. has not and does not employ Dr. Buckwalter and has been named in error. (HHCR and MCC have substantially common ownership.)

4. Dr. Berman is a Pennsylvania licensed Psychologist who is an independent contractor for The Maternal Child Consortium, Inc. Any records responsive to the request for production of documents set forth in the Rider attached to the Berman Subpoena are the confidential behavioral health records of MCC. Home HealthCare Resources, Inc. has not and does not employ Dr. Berman and has been named in error. (HHCR and MCC have substantially common ownership.)

5. MCC is a Pediatric Psychiatric Clinic providing behavioral health services to children with emotional and developmental issues. MCC operates pursuant to a Provider 50 Psychiatric Outpatient Clinic license issued by the Commonwealth of

Pennsylvania.

6. Any communications between Dr. Buckwalter and a client is a privileged communication which Dr. Buckwalter is prohibited from disclosing. 42 Pa. C.S.A. §5944; 50 Pa. Unconsolidated Statutes §7111(a). All materials sought in the Buckwalter Subpoena are subject to the privilege set forth in 42 Pa. C.S.A. §5944 and 50 Pa. Unconsolidated Statutes §7111(a). Ethically, Dr. Buckwalter is prohibited by her Code of Ethics as a Psychologist from testifying regarding her clients. 49 Pa.Code §§41.58 and 41.61.

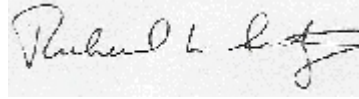
7. Any communications between Dr. Berman and a client is a privileged communication which Dr. Berman is prohibited from disclosing. 42 Pa. C.S.A. §5944; 50 Pa. Unconsolidated Statutes §7111(a). All materials sought in the Buckwalter Subpoena are subject to the privilege set forth in 42 Pa. C.S.A. §5944 and 50 Pa. Unconsolidated Statutes §7111(a). Ethically, Dr. Berman is prohibited by her Code of Ethics as a Psychologist from testifying regarding her clients. 49 Pa.Code §§41.58 and 41.61.

8. MCC, in addition to relying upon the privileges extended to Dr. Buckwalter and Dr. Berman by 42 Pa. C.S.A. §5944, are prohibited from disclosing the material responsive to the production request pursuant to 55 Pa.Code §§5100.34 and 5100.35 and 50 Pa. Unconsolidated Statutes §7111(a).

9. HHCR has no materials which might be responsive to the Buckwalter and Berman Subpoenas.

WHEREFORE, MCC, HHCR, Dr. Buckwalter and Dr. Berman respectfully request that the Court Quash the Buckwalter Subpoena and the Berman Subpoena.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard L. Switzer", is written over a light gray rectangular background.

Richard L. Switzer

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